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DEPARTMENT OF HOMELAND SECURITY

Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2A and H-2B Nonimmigrant Worker Programs

RIN 1601-ZA11

Docket No. DHS-2011-0108

AGENCY: Office of the Secretary, DHS.

ACTION: Notice.

SUMMARY: Under Department of Homeland Security (DHS) regulations, U.S. Citizenship and Immigration Services (USCIS) may approve petitions for H-2A and H-2B nonimmigrant status only for nationals of countries¹ that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated by notice published in the **Federal Register**. That notice must be renewed each year. This notice announces that the Secretary of Homeland Security, in consultation with the Secretary of State, is identifying 84 countries whose nationals are eligible to participate in the H-2A program and 83 countries whose nationals are eligible to participate in the H-2B program for the coming year.

DATES: *Effective Date:* This notice is effective January 18, 2016, and shall be without effect at the end of one year after January 18, 2016.

FOR FURTHER INFORMATION CONTACT: Timothy Simmons, Office of Policy,
Department of Homeland Security, Washington, DC 20528, (202) 447-4216.

¹ With respect to all references to “country” or “countries” in this document, it should be noted that the Taiwan Relations Act of 1979, Pub. L. No. 96-8, Section 4(b)(1), provides that “[w]henver the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.” 22 U.S.C. § 3303(b)(1). Accordingly, all references to “country” or “countries” in the regulations governing whether nationals of a country are eligible for H-2 program participation, 8 CFR 214.2(h)(5)(i)(F)(1)(i) and 8 CFR 214.2(h)(6)(i)(E)(1), are read to include Taiwan. This is consistent with the United States’ one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.

SUPPLEMENTARY INFORMATION:

BACKGROUND: Generally, USCIS may approve H-2A and H-2B petitions for nationals of only those countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated as participating countries. Such designation must be published as a notice in the **Federal Register** and expires after one year. USCIS, however, may allow a national from a country not on the list to be named as a beneficiary of an H-2A or H-2B petition based on a determination that such participation is in the U.S. interest. See 8 CFR 214.2(h)(5)(i)(F) and 8 CFR 214.2(h)(6)(i)(E).

In designating countries to include on the list, the Secretary of Homeland Security, with the concurrence of the Secretary of State, will take into account factors including, but not limited to: (1) the country's cooperation with respect to issuance of travel documents for citizens, subjects, nationals, and residents of that country who are subject to a final order of removal; (2) the number of final and unexecuted orders of removal against citizens, subjects, nationals, and residents of that country; (3) the number of orders of removal executed against citizens, subjects, nationals, and residents of that country; and (4) such other factors as may serve the U.S. interest. See 8 CFR 214.2(h)(5)(i)(F)(1)(i) and 8 CFR 214.2(h)(6)(i)(E)(1). Examples of factors serving the U.S. interest that could result in the non-inclusion of a country or the removal of a country from the list include, but are not limited to, fraud, abuse, and non-compliance with the terms and conditions of the H-2 programs by nationals of that country.

In December 2008, DHS published in the **Federal Register** two notices, "Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2A Visa Program," and "Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2B Visa Program," which designated 28 countries whose nationals are eligible to participate in the

H-2A and H-2B programs. See 73 FR 77043 (Dec. 18, 2008); 73 FR 77729 (Dec. 19, 2008).

The notices ceased to have effect on January 17, 2010 and January 18, 2010, respectively. See 8 CFR 214.2(h)(5)(i)(F)(2) and 8 CFR 214.2(h)(6)(i)(E)(3). In implementing these regulatory provisions, the Secretary of Homeland Security, with the concurrence of the Secretary of State, has published a series of notices on a regular basis. See 75 FR 2879 (Jan. 19, 2010) (adding 11 countries); 76 FR 2915 (Jan. 18, 2011) (removing Indonesia and adding 15 countries); 77 FR 2558 (Jan. 18, 2012) (adding 5 countries); 78 FR 4154 (Jan. 18, 2013) (adding 1 country); 79 FR 3214 (Jan. 17, 2014) (adding 4 countries); 79 FR 74735 (Dec. 16, 2014) (adding 5 countries).

The Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that 67 countries previously designated in the December 16, 2014 notice continue to meet the standards identified in that notice for eligible countries and therefore should remain designated as countries whose nationals are eligible to participate in both the H-2A and H-2B programs. The Secretary of Homeland Security has determined, however, with the concurrence of the Secretary of State, that Moldova should no longer continue to be designated as an eligible country to participate in the H-2B program because Moldova is not meeting the standards set out in the regulation for the H-2B program participation. See 8 CFR 214.2(h)(6)(i)(E)(1). Specifically, DHS and the Department of State have found that there is a high occurrence of failure to comply with the terms of the H-2B visa among H-2B visa holders from Moldova. Moldova continues to meet the standards set out in the regulation in regard to its participation in the H-2A program; therefore, this determination does not affect participation of nationals of Moldova in the H-2A program. Accordingly, Moldova remains on the list of eligible countries for the H-2A program, but DHS has removed Moldova from the list of eligible countries whose nationals are eligible to participate in the H-2B program.

Further, the Secretary of Homeland Security, with the concurrence of the Secretary of State, has determined that it is now appropriate to add 16 countries whose nationals are eligible to participate in the H-2A and H-2B programs. This determination is made taking into account the four regulatory factors identified above. The Secretary of Homeland Security also considered other pertinent factors including, but not limited to, evidence of past usage of the H-2A and H-2B programs by nationals of the country to be added, as well as evidence relating to the economic impact on particular U.S. industries or regions resulting from the addition or continued non-inclusion of specific countries. In consideration of all of the above, this notice designates for the first time Andorra, Belgium, Brunei, Colombia, Finland, France, Germany, Greece, Lichtenstein, Luxembourg, Malta, Monaco, San Marino, Singapore, Taiwan, and Timor-Leste as countries whose nationals are eligible to participate in the H-2A and H-2B programs.

Designation of Countries Whose Nationals Are Eligible to Participate in the H-2A and H-2B Nonimmigrant Worker Programs

Pursuant to the authority provided to the Secretary of Homeland Security under sections 214(a)(1), 215(a)(1), and 241 of the Immigration and Nationality Act (8 U.S.C. 1184(a)(1), 1185(a)(1), and 1231), I am designating, with the concurrence of the Secretary of State, nationals from the following countries to be eligible to participate in the H-2A nonimmigrant worker program:

Andorra

Argentina

Australia

Austria

Barbados

Belgium
Belize
Brazil
Brunei
Bulgaria
Canada
Chile
Colombia
Costa Rica
Croatia
Czech Republic
Denmark
Dominican Republic
Ecuador
El Salvador
Estonia
Ethiopia
Fiji
Finland
France
Germany
Greece
Grenada

Guatemala
Haiti
Honduras
Hungary
Iceland
Ireland
Israel
Italy
Jamaica
Japan
Kiribati
Latvia
Lichtenstein
Lithuania
Luxembourg
Macedonia
Madagascar
Malta
Mexico
Moldova
Monaco
Montenegro
Nauru

The Netherlands
Nicaragua
New Zealand
Norway
Panama
Papua New Guinea
Peru
The Philippines
Poland
Portugal
Romania
Samoa
San Marino
Serbia
Singapore
Slovakia
Slovenia
Solomon Islands
South Africa
South Korea
Spain
Sweden
Switzerland

Taiwan

Thailand

Timor-Leste

Tonga

Turkey

Tuvalu

Ukraine

United Kingdom

Uruguay

Vanuatu

Pursuant to the authority provided to the Secretary of Homeland Security under sections 214(a)(1), 215(a)(1), and 241 of the Immigration and Nationality Act (8 U.S.C. 1184(a)(1), 1185(a)(1), and 1231), I am designating, with the concurrence of the Secretary of State, nationals from the following countries to be eligible to participate in the H-2B nonimmigrant worker program:

Andorra

Argentina

Australia

Austria

Barbados

Belgium

Belize

Brazil

Brunei
Bulgaria
Canada
Chile
Colombia
Costa Rica
Croatia
Czech Republic
Denmark
Dominican Republic
Ecuador
El Salvador
Estonia
Ethiopia
Fiji
Finland
France
Germany
Greece
Grenada
Guatemala
Haiti
Honduras

Hungary
Iceland
Ireland
Israel
Italy
Jamaica
Japan
Kiribati
Latvia
Lichtenstein
Lithuania
Luxembourg
Macedonia
Madagascar
Malta
Mexico
Monaco
Montenegro
Nauru
The Netherlands
Nicaragua
New Zealand
Norway

Panama
Papua New Guinea
Peru
The Philippines
Poland
Portugal
Romania
Samoa
San Marino
Serbia
Singapore
Slovakia
Slovenia
Solomon Islands
South Africa
South Korea
Spain
Sweden
Switzerland
Taiwan
Thailand
Timor-Leste
Tonga

Turkey

Tuvalu

Ukraine

United Kingdom

Uruguay

Vanuatu

This notice does not affect the status of aliens who currently hold valid H-2A or H-2B nonimmigrant status. Persons currently holding such status, however, will be affected by this notice should they seek an extension of stay in H-2 classification, or a change of status from one H-2 status to another. Similarly, persons holding nonimmigrant status other than H-2 status are not affected by this notice unless they seek a change of status to H-2 status.

Nothing in this notice limits the authority of the Secretary of Homeland Security or his or her designee or any other federal agency to invoke against any foreign country or its nationals any other remedy, penalty, or enforcement action available by law.

Jeh Charles Johnson,
Secretary.

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